Supreme Court, U.S.
FILED

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No._____

# IN THE

# Supreme Court of the United States

**Jose Melendrez, Jr.,**

**Petitioner,**

**vs.**

**Roberto Loza, Task Force Agent, Zapata County, Texas in his official capacity; Tony Quintanilla, formerly Investigator of Zapata County, Texas, now a U.S. Border Patrol Agent in his official capacity; Arnoldo Ramos, Sergeant/Investigative Department of Public Safety in Del Rio, Texas, in his official capacity; Arnoldo Flores, District County Clerk, Zapata County, Texas, in his official capacity; Juan H. Navarro, Sergeant at Zapata County Sheriff's Department, Texas in his official capacity; Rolando Garza, District Attorney, Zapata County, Texas in his official capacity.**

**Respondents.**

**On Petition For Writ of Certiorari**
**To The United States Court of Appeals**
**For The Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI

**Jose Melendrez Jr.**
**745 Appleton Rd.**
**Menasha, WI 54952**
**(920)725-4506**
**In Pro Se**
*Attorney of Record* *Attorney of Record for Petitioner*

**NOW COMES, Jose Melendrez, Jr., In Pro Se,** files this **"Petition for Writ of Certiorari"** in good faith. With all due respect to the United States Court of Appeals for the Fifth Circuit and the U.S. District Court in Laredo, Texas, the following questions presented herein by the Petitioner are undoubtedly clear and concise.

However, the lower Courts have acted deliberately, intentionally and unconstitutionally in **concealing exculpatory evidence** by **not holding any hearings** on the relevant issues, evidence and case at hand. In addition, the lower Courts in this case have deliberately overlooked the Petitioner's instant case and have mis-apprehended the law that was established in the United States Court of Appeals for the Fifth Circuit in Slavin v. Curry, cite as 574 F.2d 1256 (1978) based on CONSPIRACY THEORY, and other relevant case law.

In addition, Petitioner's evidence exposes a major "Conspiracy of Official Misconduct" in the Southern District of Texas. Moreover, the Petitioner's relevant issues and evidence will clearly undermine the lower Court's decisions. Therefore, the Petitioner presents the following questions:

## QUESTIONS PRESENTED FOR REVIEW

I. Whether the U.S. Court of Appeals was in error to **construe** and **affirm** the lower Court's Decision that Petitioner's Section 42 U.S.C.A. & 1983 Civil Action as an invocation of Melendrez's Six Amendment Right to Speedy trial.

II. Whether the U.S. Court of Appeals was in error to AFFIRM the lower court's decision that the Petitioner's case failed to state a claim of violation of clearly established law, **and that the Defendants are entitled to official immunity.**

III. Whether the U.S. Court of Appeals was in error to **AFFIRM** the lower court's decision by re-characterizing the Petitioner's instant lawsuit/case against all the Defendants in both their personal and official capacities.

IV. Whether the U.S. Court of Appeals was in error to **affirm** the lower Court's decision that Petitioner's lawsuit against all of the Defendants on the Petitioner's Fourteenth Amendment claim as being time-barred

V. Whether the U.S. Court of Appeals was in error to **affirm** the lower Court's decision that Petitioner's second cause of action as being a Sixth Amendment Challenge..

VI. Whether the U.S. Court of Appeals was in error to **affirm** the lower Court's decision that at all times relevant to Defendant Arnoldo Ramos was an employee of the State of Texas, therefore, he is immune from the official-capacity claim.

VII. Whether the U.S. Court of Appeals was in error to **affirm** the lower Court's decision that the Petitioner's Motion for Preliminary injunction be dismissed because according to the Petitioner the warrant/capias had already been dismissed for almost a year.

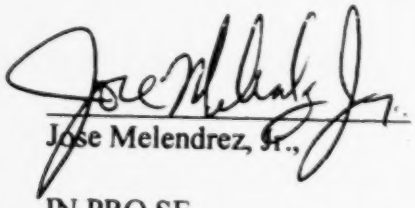
## CERTIFICATE OF INTERESTED PARTIES

These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

Jose Melendrez, Jr., Plaintiff/Appellant/Petitioner

Mr. Phillip A. McKinney and Mr. Jason Libby, Attorneys at Law, Professional Corporation, 615 N. Upper Broadway, P.O. Box 2747, Corpus Christi, Texas 78403, attorneys of record for the following named Defendants: Roberto Loza, Rolando Garza, Arnoldo Flores, Juan H. Navarrro and Tony Quintanilla.

Seth Byron Dennis, Assistant Attorney General, Office of the Texas State Attorney General, Counsel of Record for Defendant/Appellee, Arnoldo Ramos



Jose Melendrez, Jr.,

IN PRO SE

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IN THE
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JOSE MELENDREZ, JR,

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v.

UNITED STATES OF AMERICA, et al.,

Respondents.

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AFFIDAVIT OF MAILING

---

STATE OF WISCONSIN )
)
) SS SUPREME COURT
) RULE 29
)
COUNTY OF WINNEBAGO )

Jose Melendrez, Jr., having been first duly sworn according to law, deposes and says:

That he is the petitioner in the above captioned case and the deponent herein.

That the deponent on the 29 day of July 2002 mailed his

**BRIEF FOR THE PETITIONER**

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (App. C, infra) is not reported. The opinion of the United States District Court (App. B, infra) is also not reported.

## JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered its judgment on June 4, 2002 (App. C, infra). The Petitioner did not apply for rehearing en banc. The Petition for a Writ of Certiorari is filed on July 29, 2002. The Court has jurisdiction under 28 U.S.C. Section 1254 (1). In addition, the Plaintiff/Appellant/Petitioner submits that the Petition for Writ of Certiorari has been properly commenced within the statutory time period as set forth by Rule 13 (1) of the Federal Rules of the Supreme Court of the United States of America.

## STATUTORY PROVISION INVOLVED

42 U.S.C. & 1983 established by an act of Congress provides that the purpose of Section 1983 is to deter state actors(not federal authorities) from using badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.

## CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment of the U.S. Constitution provides the Petitioner with due process rights, freedom of choice and liberty, including protection of his due process rights in any civil or criminal proceeding.

## STATEMENT OF THE CASE

1. With respect to this instant lawsuit, Petitioner started investigating the instant case as early as May of 1997 and November of 1998. Petitioner met with Agent Robert Harvey of the Federal Bureau of Investigations in Duluth, MN., concerning allegations of conspiracy of official misconduct. The FBI investigation led by Agent Robert Harvey continued all the way through January 2000 by the FBI Field Office in Duluth, MN, and San Antonio, Texas , Additional Agents of the FBI also investigated, Special Agent Jeff Tisak joined the investigation on January 2000 and Special Agent Mike Appleby from the Field Office of San Antonio, Texas.

2. On March 10, 1999 the Petitioner was advised to re-file his original complaint filed on June 5, 1997, with the assistance of Attorney Jesse Gamez, to the U.S. Attorney's Office in San Antonio, Texas., concerning allegations of conspiracy of official misconduct by County, States and Federal Law Enforcement Officials. Even with the recommendation to re-file the Petitioner's original complaint by the FBI in Duluth, MN, and FBI office in San Antonio, Texas., the Petitioner's complaint was given no consideration by the U.S. Attorney's Office in San Antonio, Texas., and no investigation was conducted by the U.S. Attorney's Office.

3. On March of 2000 Agent Robert Harvey of the FBI in Duluth, MN., retired and Agent Jeff Tisak took over the investigation. The investigation was concentrated on a criminal

indictment case number #992 against Jose Melendrez, Jr., that had disappeared on March or April of 1994 in Laredo, Texas., due to Petitioner's cooperating status as an informant with County, State and Federal Law Enforcement Officials in Zapata County, Texas, and Del Rio, Texas, including Eagle Pass, Texas. The FBI investigation was also concentrated on a MURDER investigation of a Deputy Sheriff Kenneth Meister. The individual who was under MURDER investigation was Domingo Moncada (County Investigator in Crystal City, Texas and Eagle Pass, Texas).

4. On April 21, 2000, the Petitioner was informed by his family members that a warrant/capias case Number #992 had been issued by the Zapata County Sheriff's Department in retaliation to Petitioner's persistence to get his case investigated by the U.S. Attorney's Office in San Antonio, Texas., and to BLOW THE WHISTLE on the alleged CONSPIRACY OF OFFICIAL MISCONDUCT.

5. On June 20, 2000, the Petitioner filed an administrative lawsuit against the Federal Government Agents for charging the Petitioner in conspiracy with intent to distribute marijuana with Guadalupe Garza and said others because it takes two to conspire and there can be no indictable conspiracy with a government informer.

6. On July 20, 2000, the Petitioner filed the instant complaint against Defendants, County and State officials under Section 42 U.S.C.A & 1983, in violation of Petitioner's Fourteenth

Amendment Due Process rights and when also filing a six-year old stale warrant/capias (Case # 992) against the Petitioner.

7. On September 28, 2001 Petitioner filed his instant appeal against the Defendants Appellees after the U.S. District Court for the Southern District of Texas DISMISSED the Petitioner's lawsuit on July 27, 2001 WITHOUT HOLDING ANY HEARINGS on the INSTANT MATTER (CASE)AT HAND.

8. On June 4, 2002, the United States Court of Appeals for the Fifth Circuit DISMISSED Petitioner's lawsuit and AFFIRMED the lower Court's decision.

9. On July 29, 2002, the Petitioner files this instant Original Petition for Writ of Certiorari for the Courts judicial review.

## STATEMENT OF THE FACTS

1. On December 1992, the Plaintiff was released on parole (six months left) from the Missouri Correctional facility (Boonville) to the custody of the State of Texas Law Enforcement to answer to a detainer (theft case). The Plaintiff was released from Bexar County Jail with the Help of his Attorney Mr. Carlos Martinez on two-thousand dollar bail bond. The Plaintiff returned to his home town in Crystal city, Texas to await trial.

2. The Plaintiff reported regularly to his Parole Officer in Del Rio, Texas, or Crystal City on certain occasions. The Plaintiff violated his parole on several occasions by getting dirty

urinalysis(cocaine). The Parole Officer, (to the knowledge of the Plaintiff), never violated the Plaintiff by reporting to the State of Missouri, or the Texas authorities where the Plaintiff was out on parole and bond.

3. On March or April of 1993, the Plaintiff(Jose Melendrez Jr.) And Pedro Gutierrez were arrested by U.S. Border Patrols Agents in Zapata County, Texas., instead of reporting the two individuals/Plaintiff to the Drug Enforcement Administration, the U.S. Border Patrol Agents referred the Plaintiff/Appellant/ Petitioner to the County Investigator in Zapata County. Tony Quintanilla headed the Investigation. The Plaintiff's were asked to cooperate or go to prison (threatened), because the investigators knew the Plaintiff, Jose Melendrez, Jr., was on parole from Missouri, and bond from the State of Texas. The Plaintiffs cooperated and released the next morning. Neither the State of Texas, Zapata County Investigators or United States Border Patrol Agents report the incident to the parole officer from Del Rio, Texas., or the State of Texas, 290th Judicial District Court where the Plaintiff/Petitioner was out on bond. The Plaintiff/ Petitioner did not report the incident because he had signed a sworn statement not to tell anybody about the operation.

4. I, Since I had a contract with County Investigator, Tony Quintanilla to work for him as his informant, consequently, I joined in March or April of 1993 the Guadalupe Garza's Drug Conspiracy as an informer for the County Investigator Tony Quintanilla and not as a confederate to further the scheme.

5. From March thru November of 1993, the Plaintiff was pressured into retrieving information on drug dealers by the County Investigator.

6. On May of 1993, the Plaintiff/Petitioner received a letter form Tony Quintanilla asking the Plaintiff/Petitioner to contact him at the earliest convenience. (Concerning information on drug dealers).

7. The Plaintiff/Petitioner by then, had already met Guadalupe Garza on March or April of 1993 in Pearsal, Texas., where they became mutually acquainted. With orders and authorization of the County Investigator, Tony Quintanilla; the Plaintiff/Petitioner was participating in undercover operations in the South Western District of Texas. In November of 1993, the Plaintiff/Petitioner contacted Tony Quintanilla and advised him of a marijuana load and Tony Quintanilla then told the Plaintiff/Petitioner to contact Arnoldo Ramos, Sgt/Inv. Department of Public Safety in Del Rio, Texas. Tony Quintanilla and Arnoldo Ramos (State Trooper or DPS) then conspired with the United States Border Patrol Agents in relating information to them about a marijuana drug load that resulted in the arrest of two individuals; Patricia Gomez Diaz and the seizure of two automobiles, and the seizure of 176 kilos of Marijuana. The Plaintiff/ Petitioner received a thank you and to continue to look for drug dealers.

8. The Plaintiff was then subpeonaed to testify in U.S. Federal Court in Del Rio, Texas, on the same load he had reported

to Tony Quintanilla and Sgt/Inv. Department of Public Safety, Arnoldo Ramos. The Plaintiff/Petitioner was then coached into conspiring with Arnoldo Ramos, Sgt./Inv. Department of Public Safety and the U.S. District Attorney into misleading the grand jury by saying that he did not know about Guadalupe Garza's involvement with drug trafficking, and that the Plaintiff had just borrowed the truck to Guadalupe Garza to fix it. And it worked! The Federal Grand Jury never found out that I was the informant in the case, and it left me in a position to keep on working.

9. On November of 1993, the Plaintiff with orders and authorization of the County Investigator (Tony Quintanilla) continued to retrieve information on drug dealers in and out of the United States (Republic of Mexico). All this happened before I was even arrested on the federal government case. Conspiracy to distribute marijuana.

10. On November of 1993, the Plaintiff (not being in the possession of the marijuana)was arrested by the Drug Enforcement Administration in Eagle Pass, Texas. (Special Agent Tapia, Larry Leon, and Francis E. Seib) for scouting the road for Guadalupe Garza.

11. The Plaintiff/Petitioner explained he was working for the County Investigator (Tony Quintanilla) but the DEA was not interested, not unless, if I cooperated with their agency. I was arrested and released that same day after giving a signed statement to the DEA, and took an oath not to disclose to anybody what I

was doing for the DEA. I joined the DEA as an informer and not as a confederate to further the scheme.

12. I was also advised that they wanted Guadalupe Garza with as much marijuana as possible, not matter what the cost, (the DEA did not report this incident or arrest to the Texas authorities where the Plaintiff was already under Bond Restrictions).

13. After a couple of weeks I was constantly called and visited by Agent Tapia asking for information on drug dealers. Agent Tapia advised that the U.S. Attorney needed some cases or else they were going to pull the plug on the operation.

14. After a couple of weeks stressful meetings with DEA Agents, the Plaintiff/Petitioner finally got a drug deal in San Antonio, TX. Where the Plaintiff/Petitioner conspired with DEA Agent Francis E. Seib, an Agent, for the Federal Government and working with the concurrence of the Bexar County District Attorney's office , on January 19, 1994 the two agencies conspired together knowing and willingly in an investigation which led to the seizure of 10 ounces of cocaine and two San Antonio residents and 1 automobile. The Bexar County District Attorney's Office did not violate Jose Melendrez Jr., because he was to important to the DEA under cover operation on January 19, 1994, in violation of his bond; for theft imposed by the 290th Judicial District Court, (Honorable Judge Sharron MaCrae). When the Plaintiff/ Petitioner Jose Melendrez, Jr., was acting as an informant on two occasions for the State and Federal Government. The Plaintiff/Petitioner

was given a thank you and to resume working as an informant.

15. On or about the beginning of 1994, the Plaintiff also gave information to the DEA on County Investigator Domingo Moncada on weapons and marijuana dealings in Crystal City, and Eagle Pass, Texas. The information was good! The County Investigator was arrested by the DEA and other law enforcement agencies in Crystal City, Texas.

16. The Plaintiff was advised to keep trying Guadalupe Garza on retrieving more information on drug loads. From January 1994 thru January 25, 1995. The Plaintiff was successful again on retreiving information on several occasions and incriminating other individuals in marijuana drug smuggling into the United States. The Plaintiff at times not at the crime scenes still reported hearsay and signed statement on several occasions.

17. On March or April of 1994, the Plaintiff/Petitioner was indicted by the Grand Jury in Zapata & Webb County for possessing marijuana and cocaine. The Plaintiff/Petitioner was arrested by United States Border Patrol Agents and the concurrence of the Zapata County Investigators Office in Zapata, Texas., on March or April of 1993.

18. The Plaintiff/Petitioner was also arrested in Crystal City, Texas., after the Zapata County Clerk, Arnoldo Flores for the 49th Judicial District Court, Webb County and the City of Laredo, TX., filed the summons on the 24th day of March 1994, for the Plaintiff/Petitioner to attend court. The Plaintiff/Petitioner was

served by the Zavala county Sheriff's Department in Crystal City, TX., Sheriff Jose Serna, on the 15th day of April 1994, 4:15 O'clock P.M. And a couple of months later, the Plaintiff/Petitioner was arrested and released on a signature bond the following day on the same case in Crystal City, TX., The Plaintiff/ Petitioner attended court a couple of times in Zapata and Webb County Courthouse in Laredo, TX., and then the Plaintiff/Petitioner was never again scheduled to attend court in Laredo, Texas.

19. The marijuana and cocaine deal disappeared and was never mentioned to the State Authorities or Federal Government until April 21, 2000. The Plaintiff/Petitioner's friend Pedro Gutierrez wha was also mentioned in the indictment was convicted and given probation for the same charge because he did not give any information to Tony Quintanilla on drug dealers.

20. The Zapata County Investigator Tony Quintanilla, Roberto Loza, Arnoldo Flores, and Arnoldo Ramos, Sgt/Inv.(DPS) instead of disposing the case against Jose Melendrez, Jr., for possessing cocaine and marijuana, conspired together with the government not to disclose the case against Jose Melendrez, Jr., in March or April 1994, because it would jeopardize the undrcover operation in which Jose Melendrez, Jr., was participating in as an informant for the State and Federal Government in several cases, besides they had already conspired together in Del Rio, Texas, (where the Plaintiff/Petitioner was coerced into misleading the federal grand jury with their influence in Del Rio, Texas, in November of 1993).

21. The Defendants; Tony Quintanilla , formerly Zapata County Investigator, now a U.S. Border Patrol Agent; Roberto Loza, Task Force Agent; Arnoldo Ramos, Sgt/Inv. (DPS); and Arnoldo Flores, Zapata County District Clerk and others known and unknown did unlawfully, willfully and knowingly combine, conspire, confederate, and agree together and with each other to violate the Plaintiff/Petitioner's rights to freedom of choice and "liberty" and the violation of his due process rights which are protected and assured by the 14th amendment, as guaranteed by the Plaintiff/Petitioner's constitutional rights. Instead of the Defendants terminating the under cover operation; which led to more serious crimes, joined the federal government in its endeavors in conspiring to further the scheme, and in conspiring to cover up and concealing the indictment from Zapata & Webb County in 1994. The Defendants "Conspiracy of Official Misconduct" which started on or about March or April of 1993 through March or April of 1994, and extended trough April 21, 2000, in not disposing the Zapata County indictment against Jose Melendrez, Jr., in March or April of 1994 caused the following events:

22. On July 1994, the Plaintiff/Petitioner also participated in driving a marijuana load from Eagle Pass, Texas, to Pearsal, Texas where State and Federal Law Enforcement agencies; willfully and knowingly conspired together in a marijuana investigation in; (Eagle Pass, TX)(Pearsal, TX)and (San Antonio, TX) where more than 150-kilos of marijuana were seized.

23. The Plaintiff/Petitioner was given a thank you and a two-

thousand dollar pay-check from the Drug Enforcement Administration in Eagle Pass, Texas. (Special Agent Larry Leon).

24. On August of 1994, the Plaintiff asked the DEA Agent Larry Leon and Francis E. Seib for a letter of recommendation for his work as an informant to present to the 290th District court (Judge Sharron MaCrae)in San Antonio, Texas, where the Plaintiff was placed on probation for 10 years for theft in Bexar County.

25. The letter was not even considered by the Honorable Judge Sharron MaCrae, because the letter stated that the Plaintiff/Petitioner had participated as an informant with the concurrence of the Bexar County District Attorney's Office and the DEA Agent Francis E. Seib in January 19, 1994 and November of 1993. The advice from the Plaintiff's Attorney (Carlos Martinez) was that the DEA had not helped in anyway, as far as his work, as an informant was concerned. The Honorable Judge Sharron MaCrae neglected to further investigate the Plaintiff/Petitioner's participation; while on bond, with federal and state law enforcement, which would of terminated the under cover operation.

26. The DEA did not ask the State of Texas, the 290th District Court and the Probation Office (Jan Taylor) for permission or authorization to use the Plaintiff as an informant during his time on bond for theft, and bond from Zapata, Texas, and his placement of probation.

27. On January 1995, the Plaintiff/Petitioner participated in

another marijuana load, where the Plaintiff/Petitioner called DEA Agent Francis E. Seib and Moses Pena(Agent) in Eagle Pass, TX., and advised them that Guadalupe Garza was in town with another load. The Plaintiff/ Petitioner related the information on where and when, and the DEA missed the load but managed to arrest Guadalupe Garza on illegal entry into the United States.

28. On January 25, the Plaintiff was advised to report to Eagle Pass, TX to give a statement on the overall undercover operation since March or April of 1993 thru January 25, 1995. The Plaintiff/Petitioner and the controlling Agent Larry Leon and another Federal Law Enforcement Officer (as a witness) signed and dated the statement.

29. On July 1995, the Plaintiff/Petitioner was arrested in North Dakota, with an indictment form Del Rio, TX, charging the Plaintiff with Count: (1) Possession with intent to Distribute Marijuana. Count (2) Conspiracy Possession with intent to Distribute a quantity of Marijuana.

30. The Plaintiff attended a Detention Hearing in Fargo, North Dakota where the Honorable U.S. Magistrate Judge (Karen Klein) presided, the Plaintiff fought extradition to Texas and won on the grounds of conflicting testimony of the DEA Special Agent Moses Pena.

31. The Plaintiff/Petitioner was released to the Halfway House in Fargo, North Dakota where he resided until he was scheduled to appear in U.S. Court in Del Rio, Texas.

On July 26, 1995.

32. The Plaintiff/Petitioner attended U.S. Federal Court in Del Rio, TX., On July 26, 1995, and was arrested and released on bond. The U.S Prosecuting Attorney, Aulia Ludlum, advised the Plaintiff/Petitioner to leave the State of Texas for security purposes and not to twl anybody or even go to Crystal City, TX., it was a condition of release. The State of Texas did not violate the Plaintiff/Petitioner Jose Melendrez, Jr., for violating his probation restriction on July 26, 1995 for getting arrested by the Federal Government.

33. The State of Texas violated Jose Melendrez Jr., on May 14, 1996 on the grounds that he had not reported to the Probation Officer, Jan Taylor, in San Antonio, TX., after 10 months; after the fact, that Jose Melendrez, Jr., had been arrested on July 26, 1995 by the federal government.

34. On August 1995, the Plaintiff/Petitioner's Attorney Edward Bartolomei mailed a letter to the Plaintiff/Petitioner's residence in Moorhead, MN., advising the Plaintiff/Petitioner to sign a waiver to appear in U.S. Federal Court in Del Rio, TX., the Plaintiff/Petitioner traveled to North Dakota without permission of the State of Texas, 290th District Court because the U.S. Prosecuting Attorney, Aulia Ludlum advised the Plaintiff/ Petitioner and his attorney that he needed to leave the same day he was released from Val Verde County Jail.

35. On October of 1995, in San Antonio, TX., the Plaintiff/ Petitioner debriefed to the Federal Bureau of Investigations about

Domingo Moncada and his alleged weapons and marijuana dealings, and Plaintiff/Petitioner's money payoffs to (DEA)

36. On December of 1995, the Plaintiff/Petitioner facing 10 years in federal prison Pleaded guilty to Conspiracy Possession with intent to Distribute a quantity of Marijuana to 84 months in prison, in return for the Plaintiff/Petitioner's full cooperation on derbiefings about his whole operation with DEA in Eagle Pass, TX., the government only fullfilled to a certain extend of its plea bargaining.

37. The Plaintiff/Petitioner was going to testify against Domingo Moncada in San Antonio, TX., federal court, but Domingo Moncada threatened the prosecution, and according to the Plaintiff/Petitioner Jose Melendrez, Jr., Mr. Moncada had to much information that would jeopardize the unveiling of all the corruption in San Antonio, and Southwest Texas., if the federal government were to expose and convict Domingo Moncada, who was also under Federal Investigation for the MURDER of Deputy Sheriff Kenneth Meister and the missing of a million dollars.(The FBI was conducting the investigation)

38. The Plaintiff/Petitioner on or about March or May of 1996 also made a positive identification on 35,000 dollar individual for the murders of DEA Agents in California, after being questioned by DEA Agents at the U.S. Federal Court House in San Antonio,TX. The Plaintiff/Petitioner also participated with DEA Internal Affair Agents from Washington, DC., on alleged money-pay offs to DEA Agent in Eagle Pass, TX.

39. All this happened while the Petitioner was on probation with the 290th Judicial District Court in San Antonio, TX., where the Hon. Sharron MaCrae presided. The Conditions of probation clearly state that they must ask for permission and authorization to use the Petitioner on any kind of investigation!

40. To add on to the Petitioner's state of mind and to prove that there was an ongoing CONSPIRACY of OFFICIAL MISCONDUCT between State, and federal law enforcement agency's in South and Southwest Texas., on April 21, 2000. The Indictment from 1994, from Zapata and Webb County for possessing marijuana and cocaine resurfaced after the Petitioner presented it to the FBI. Again, On April 21, 2000, the State and Federal Government were conspiring together to re-instate the Zapata County Case, because the Petitioner was alleging misconduct by their offices, only after the Petitioner had presented the indictment to the FBI on January 2000, did the Zapata County Sheriff's Department from Zapata, Texas., acknowledge the Zapata County indictment. Even "IF" the Zapata County claims an error on their behalf for filing the arrest warrant/capias, the Petitioner believes that the Zapata County Sheriff's Department should be punished or liable and fact the same consequences, as the Petitioner himself was punished in state and federal court for his mistakes in participating in drug transactions with law enforcement. The Petitioner was sorry and claimed he had made a mistake to the courts but the Petitioner was not allowed to go home, the Petitioner had to face the consequences, in this case, prison time.

41. It took them close to six years to re-open the case: In which County Investigator Tony Quintanilla; Roberto Loza, Task Force Agent; Arnoldo Ramos, Sgt.Inv. (DPS); Arnoldo Flores, Zapata County District Clerk and federal law enforcement officials, conspired in burying the indictment from March or April of 1994.

42. The Petitioner was issued an arrest warrant/capias from the Zapata County Sheriff's Department: Juan H. Navarro, on the same charges; and indictment, on April 21, 2000, after the Defendants had not disposed of the case in March or April of 1994. The Zapata County Sheriff's Department in May of 2000 claims they never filed the case, extending the conspiracy of official misconduct from Amrch or April of 1993 to April 21, 2000 through the present time. In reality, the indictment was filed in the 49th Judicial District Court for the City of Laredo, TX., on April 15, 1994, Arnoldo Flores, the 49th Judicial District County Clerk filed a summons for the Petitioner to appear in court on April 15, 1994, with the concurrence of the Zavala County Sheriff's Department in Crystal City, TX.

43. The present warrant/capias recently filed by Juan H. Navarro, Roberto Loza, and Rolando Garza on April 21, 2000 with the concurrence of the Zapata County Sheriff's Department in Zapata, TX., and the Zapata County District Attorney's Office, clearly demonstrates conspiracy of official misconduct, and clearly violate the requirement of fundamental fairness by the due process clause of the Fourteenth Amendment.

44. After constant denials in 1997, 1998, and 1999 from federal officials, U.S. District Attorney James William Blagg and Richard L. Durbin in San Antonio, TX., and U.S. Attorney Joe Sepeda in Del Rio, TX., of alleged conspiracy of official misconduct by state and federal law enforcement, the Petitioner continued to mail several complaints alleging the same misconduct to : Office of Professional Responsibility for U.S. Attorney's, Office of Professional Responsibility for (DEA), Internal Affairs, FBI, U.S. Senators, U.S. Congressman, and the U.S. Attorney General Janet Reno in Washington, DC. Who responded that their office did not respond to individual correspondence.

45. The complaint was returned to the Federal Prison Camp in Duluth, MN, where the Petitioner's Case Manager, Mary McDonald (218-722-8634 Ext. 206) advised what the Petitioner was attempting to accomplish? The Petitioner showed the complaint to Mary McDonald, who was very interested that Ms. McDonald called the FBI, Special Agent Robert Harvey, who in return set up a meeting with Mary McDonald at the Federal Prison Camp in November of 1998.

46. The Petitioner presented the indictment to Special Agent Robert Harvey and Special Agent Jeff Tisak of the FBI at the Federal Prison Camp in Duluth, MN, (218-722-3341) for investigation on November of 1998, and January 2000, on alleged conspiracy of official misconduct within state and federal law enforcement agencies in Texas; from march or April of 1993 to June 6, 1996, and April 21, 2000, the Petitioner has been and was

constantly harassed, threatened, coerced, misled and intimidated by these law enforcement agencies into acting as an informant, till the day Petitioner was sentenced to prison. The FBI investigation still continues. On March of 2000, Special Agent Robert Harvey retired and Special Agent Jeff Tisak took over the federal Investigation.

47. On May of 2000, the Records Department Office, Katie Olson for Stephen Morgan(218-722-8634) mailed Sgt. Juan H. Navarro a letter of detainer about Jose Melendrez, Jr., on case #992 Possession of Marijuana and cocaine. The official word from the Records Officer at the Federal Prison Camp(Katie Olson) is that the State of Texas, Zapata County, Attorney's Office would be filing a detainer, when Katie Olson personally contacted by phone Juan H. Navarro and Rolando Garza.

48. On June 20, 2000, the Petitioner filed administrative lawsuit against the federal government law enforcement agents for charging the Petitioner in Conspiracy with intent to distribute marijuana with Guadalupe Garza because it takes two to conspire and there can be no indictable conspiracy with a government informer.

49. On July 20, 2000, the Petitioner filed the instant Original Complaint against the afore-mentioned Defendants under 42 U.S.C.A. Section 1983.

## REASONS FOR GRANTING THE WRIT

### 42 U.S.C. & 1983 is the exclusive remedy for Petitioner's instant civil action.

The Purpose of Section 1983 is to deter state actors (not federal law enforcement authorities) from using badge of their authority to deprive, individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.

Consequently, the Petitioner did not invoke his Six Amendment Right to Speedy trial under 42 U.S.C.A. & 1983. The Petitioner in this instant case invoked his 14th Amendment Right to freedom of choice, liberty and due process rights on his (first cause of action) and (second cause of action)under Section 1983.

In addition, Petitioner based his causes of action under conspiracy theory. See Petitioner's Original Complaint on page 2 (Causes of Action). See also, Tomko v. Lees, 416 F. Supp 1137 (W.D.PA 1976) and Klopfer v. North Carolina, 386 U.S. 213, 222, 87 S.Ct. 988, 993, 18 L.Ed.2d 1 (1966), and Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978) on Petitioner's opposition to Defendants Roberto Loza, Tony Quintanilla, Arnoldo Flores, Juan H. Navarro and Rolando Garza's Responses to Petitioner's original complaint on page 13, paragraph (1). See Also Petitioner's motion for Preliminary Injunction on page 1 paragraphs 4,5,6 and page 2 paragraph 1 & 2. In addition, see also Petitioner's Opening Brief in the U.S. Court of Appeals on pages 14,15,16 and 17 paragraph (2).Citing U.S. v. Midgley, 142 F. 3d 174, 177 (3rd. Cir. 1998).

Therefore, the Honorable Judges of the Fifth Circuit Court of Appeals were in plain-error in affirming the lower courts decision based on Petitioner's Six Amendment to speedy trial.

## VIOLATIONS OF CLEARLY ESTABLISHED LAW

In order to establish a claim under 42 U.S.C. & 1983, the Petitioner must satisfy a two-pronged test (1) that he was deprived of a right secured by the United States Constitution, and (2) that the deprivation was caused by a state actor.

Consequently, the lower Courts overlooked and misapprehended Petitioner's First Cause of Action and Second Cause of Action which clearly establishes for the record that the aforesaid Defendants violated Petitioner's Constitutional Rights (14th Amendment) when deliberately compelling Petitioner to act as an informant on several cases by means of threats and coercion and relentless course when the aforesaid Defendants conspired with each other between November of 1993 through June 6, 1996 to commit the unlawful acts. Citing Tomko v. Lees, 416 F. Supp 1137 (W.D. PA 1976) and Slavin V. Curry, 574 F.2d 1256(1978). In addition, the aforesaid Defendants violated the Petitioner's (14th Amendment) right to due process when filing a stale warrant/capias on April 21, 2000, in violation of clearly established law. Citing Klopfer v. North Carolina, 386 U.S. 213, 18 L.Ed.2d 1, 87 S.Ct. 988. See also, U.S. v. Midgley, 142 F.3d 174, 177 (3rd.Cir. 1998). Consequently, the actions of the Defendants allegedly are a continuing part of a conspiracy with each other that began November of 1993 and ends on April 21, 2000.

See also, Petitioner's Opening Brief in the U.S. Court of Appeals on page 18,19,20, and 21 paragraph 1.

**In addition, the lower Courts state that Defendants are entitled to official immunity**. Petitioner "objects" , Defendants on their Federal Court answer to Petitioner's Original Complaint admit that Case #992 was filed on March or April of 1994. If Defendants admit by themselves that it had been filed case #992, then all the Defendants named herein were placed on notice not to file a six-year old stale warrant/capias case #992 when established law did not authorize the Defendants to do so. Therefore, violating Petitioner's due process rights, 5-year statute of limitations and outside their scope of employment and their official responsibilities. See Klopfer v. North Carolina, and U.S. v. Midgley, 142 F. 3d 174, 177 (3rd Cir. 1998), see also Harlow v. Fitzgerald, 457 U.S. 800, 73 L.Ed.2d 396, 408-409 headnote 5, 102 S. Ct. 2727 (1982). This case stands for the proposition that qualified or "GOOD FAITH" immunity would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the Petitioner, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury..."Ibid. See also Petitioner's opposition to Defendants Motion to dismiss for failure to state a claim.

Therefore, the Honorable Judges of the Fifth Circuit Court of Appeals were in plain-error in affirming the lower courts decision that Petitioner failed to state a claim of violation of

clearly established law, and that the Defendants are entitled to official immunity.

**PERSONAL AND OFFICIAL CAPACITIES**

Consequently, the lower Courts conclusions and its progeny under Monell are inapplicable in the case at bar because the COUNTY and the SHERIFF, with respect to RESPONDEAT SUPERIOR THEORY were neither a TARGET of investigation nor a Defendant in this instant lawsuit. Instead, Petitioner would cite the applicable case, Harlow v. Fitzgerald, 457 U.S. 800, 73 L.Ed.2d 396, 408-409 headnote 5, 102 S.Ct. 2727 (1982).

In addition, in the case at bar, all of the Defendants admit to filing the indictment case #992 in March or April of 1994, therefore, it placed Defendants on NOTICE on April 21, 2000, not to file the warrant/capias case #992. Consequently, the lower Courts were misplaced under Monell and its progeny, and therefore, the Petitioner does not carry the burden of alleging that a municipal "policy or custom" played a part in his deprivation of rights. Nonetheless, EVEN if such policy or custom existed, the well established law in Klopfer v. North Carolina, 386 US 213, 18 L.Ed.2d 1, 87 S.Ct. 988, U.S. v. Midgley, 142 F.3d 174, 177 (3rd. Cir. 1998), Slavin v. Curry, 574 F.2d 1256(5th Cir.1978)and Tomko v. Lees, 416 F. Supp 1137 (W.D.PA 1976), clearly did not authorize the aforesaid Defendants to commit the un-authorized acts by filing a stale warrant/Capias and forcing the Petitioner to be an informant, but most importantly, conceal exculpatory evidence in furtherance of their unlawful scheme.

Therefore, the Honorable Judges of the Fifth Circuit Court of Appeals were in plain error in affirming the lower Courts decision by re-characterizing the Petitioner's instant lawsuit in both their Personal and official capacities.

**STATUTE OF LIMITATIONS - TIME BARRED**

Principles of equitable tolling apply to the statute of limitations in & 1983 actions, See Rotella v. Pederson, 144 F.3d 892, 897 (5th Cir. 1998), in addition, there is no allegation that the Defendants "induced or tricked" Petitioner into allowing the filing deadline to pass" Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96, 111 S.Ct 453, 458 (1990), additionally, there is no indication that Melendrez attempted to pursue a judicial remedy during the period of 1996 to 2000.

Consequently, the lower Courts failed to see Petitioner's argument and allegations on Petitioner's opposition to Defendants Roberto Loza, Tony Quintanilla, Arnoldo Flores, Juan H. Navarro and Rolando Garza's Responses to his Original Complaint on pages 7,8 and 9, which would have established that the Petitioner did pursue administrative remedy as early as June of 1997 to the U.S. Attorney's Office in San Antonio, TX., alleging conspiracy of official misconduct between County, State and Federal Law Enforcement officials and continued to file complaints until January 2000. Moreover, the Defendants unlawful actions were committed **undercover (undetected - concealed) until now!**

Consequently, Defendants, Roberto Loza, Tony Quintanilla Arnoldo Flores, Juan H. Navarro, and Rolando Garza DID NOT RAISE THE ISSUE of STATUTE OF LIMITATIONS as THEIR DEFENSE. (25)

Therefore, the lower Courts were in plain-error in dismissing the Petitioner's instant lawsuit against the aforementioned Defendants. Consequently, since the lower courts DID NOT conduct or hold hearings on the statute of limitations, or any other hearings the Petitioner could not present his evidence to the lower Courts that the Petitioner had been "Induced or Tricked". See also Petitioner's Opening Brief in the U.S. Court of Appeals on pages 22,23, and 24.

Consequently, the Honorable Judges of the Fifth Circuit Court of Appeals were in plain error in affirming the lower Courts decision that Petitioner's 14th Amendment claim as being time barred.

**SIXTH AMENDMENT CHALLENGE**

Consequently, this issue will be similar to the first issue on page 21 & 22, paragraph 1, on the Petitioner's instant Petition. Therefore Petitioner request the U.S Supreme Court to review the First Issue. See also, Petitioner's Opening Brief in the U.S. Court of Appeals on page 25, and 26 paragraph 1,2 and 3.

However, brief summary is required. The Petitioner did not file a cause of action under the Sixth Amendment & 1983, but rather, filed (2)causes of action under the 14th Amendment Section & 1983. In addition, the Petitioner did not authorize the lower Courts to re-characterize the Petitioner's instant civil action. Moreover, officials who conspire to execute stale warrants against the Petitioner under Section 1983 are held accountable for the violations of his constitutional rights.

Therefore, the Honorable Judges of the Fifth Circuit Court of Appeals were in plain error in affirming the lower Courts decision that Petitioner's Second Cause of Action as being a Six Amendment Challenge.

**EMPLOYEE OF THE STATE OF TEXAS**

Consequently, the Petitioner was never arrested by the State of Texas Authorities relevant to Defendant Arnoldo Ramos Sgt/Inv. (DPS). In the case at bar, Arnoldo Ramos was not acting on behalf of the State of Texas, instead Defendant Arnoldo Ramos was acting in concert with Defendant Tony Quintanilla. See Hale v. Fish, 899 F.2d 390 (5th Cir. 1990), and Citrano v. Allen Correctional Center, 891 F. Supp 312 (W.D.LA. 1995), See also, Petitioner's opposition to Defendant Arnoldo Ramos Original Answer on page 2,3,4 and page 5 paragraph 1,2, and 3. See also Tomko v. Lees, 416 F. Supp 1137 (W.D.PA) (1976), See Paul v. Davis, 424 U.S. 693, 96 S.Ct.1155, 47 L.Ed.2d 405 (1976) and Paul v. Davis, Supra., See also, Malley v. Briggs, 475 U.S. 335, 89 L.Ed.2d 271, 106 S.Ct. 1092 (1986), this case dealt with a state trooper's activities, and states qualified immunity provides ample protection to all but the plainly incompetent or those who violate the law.

In addition, Defendants Roberto Loza, Tony Quintanilla, Arnoldo Flores, Juan H. Navarro and Rolando Garza all IMPLICATE Defendant Arnoldo Ramos Sgt./Inv/ Department of Public Safety in Del Rio, Texas, that he was involved in the instant case and joined the conspiracy in October and November of 1993, therefore, we must not dismiss his claim because because

Defendant Arnoldo Ramos is involved in the alleged conspiracy of official misconduct. Citing Slavin v. Curry, 574 F.2d 1256 (1978).

Therefore, the lower Courts were in plain error in dismissing the complaint against Defendant Arnoldo Ramos, in addition, there was some confusion in the lower District Court. (See Appendix A).

**MOTION FOR PRELIMINARY INJUNCTION**

Consequently, the Petitioner filed Motion for Preliminary Injunction because according to the Zapata County District Attorney's Office the warrant/capias cause #992 had been dismissed on July 25, 2000, however, according to the Records Department at the Federal Prison Camp on November of 2000 and December 12, 2000 the warrant/capias case #992 was still active and very much alive. For these reasons Petitioner filed a motion for preliminary injunction because the Zapata County DA'S Office were deliberately and intentionally keeping the warrant/capias case #992 alive, even after the DA's Office in Zapata County had faxed a letter (Appendix D )(Attached to the Motion for Preliminary Injunction) to the Records Department at the Federal Prison Camp in Duluth, MN., dismissing the warrant/capias case #992 on July 25, 2000. See, Motion for Preliminary Injunction.

Therefore, the lower courts were in plain error to dismiss the preliminary injunction motion on the grounds that he warrant/capias had already been dismissed for almost a year. In addition, the unlawful actions undertaken by the Zapata County District Attorney's Office cements Petitioner's allegations

and claims that there is a conspiracy of official misconduct, second, the lower Courts were in plain error to dismiss the motion for preliminary injunction because he failed to see the relevant case law applicable to Petitioner's instant case. Moreover, the lower Courts were misplaced on the Motion for Preliminary Injunction because the lower Courts concluded that the courts could not enjoin in the criminal proceeding, however, the court could have enjoined because the warrant/capias case #992 had been filed in violation of establish law. Citing U.S. v. Midgley, 142 F.3d (3rd Cir. 1998), in which, it clearly states: the general federal statute of limitations applies to all offenses charge in Midgley's indictment. That Statute provides:

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capitol, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

In Klopfer v. State of North Carolina, 386 U.S. 213, 222, 87 S.Ct. 988, 993 18 L.Ed.2d 1 (1966), In which it clearly states: Constitutional Law & 854 -due process- delay of criminal trial. A state procedure which in effect allows state prosecuting officials to put a person under the cloud of an unliquidated criminal charge for an indetermined period, violates the requirement of fundamental fairness assured by the due process clause of the Fourteenth Amendment.

Therefore, the lower courts were in plain error in dismissing the Petitioner's Motion for Preliminary injunction.

## RELIEF SOUGHT BY PETITIONER

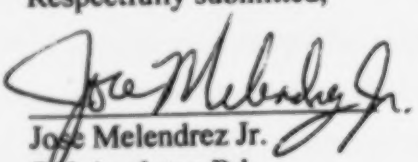
Petitioner seeks from all the Defendants $ 5 million dollars in compensatory damages and $ 15 Million Dollars in punitive damages for the injuries suffered by the Petitioner because Defendants had engaged in conduct that exhibited a reckless or callous disregard of Petitioner's constitutional rights.

## CONCLUSION

Petitioner respectfully requests the U.S. Supreme Court to thoroughly review the instant matter whether the U.S. Court of Appeals for the Fifth Circuit overlooked or misapprehended Petitioner's claims and allegations. If errors in the law were committed or misapprehended by the U.S. Court of Appeals for the Fifth Circuit, in essence, Petitioner respectfully requests the U.S. Supreme Court to REVERSE the U.S. Court of Appeals (Fifth Circuit) DECISION and remand the case back with instructions to the district court.

Dated July 29, 2002

Respectfully submitted,



Jose Melendrez Jr.
745 Appleton Rd.
Menasha, WI 54952

IN PRO SE

## CERTIFICATE OF SERVICE

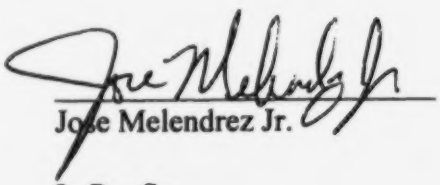
This is to certify that a true copy of the Petitioner' Jose Melendrez., Jr's., "Original Petitioner for Writ of Certiorari" was mailed on the date indicated below to the following persons:

Mr. Phillip A. McKinney and Mr. Jason Bradford Libby, Attorneys at Law, Professional Corporation, P.O. Box 2728, Corpus Christi, Texas 78403, Attorneys of record for the following named Defendants: Roberto Loza, Rolando Garza, Arnoldo Flores, Juan H. Navarro and Tony Quintanilla.

Mr. Seth Byron Dennis, Assistant Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711, Attorney of record for Defendant: Arnoldo Ramos.

The Original and 40 copies of the same material have been mailed by U.S. Postal Service and Certified Returned Receipt on the date indicated below to the Honorable Clerk of Court for the Supreme Court of the United States.

Dated: July 29, 2002



Jose Melendrez Jr.

In Pro Se

# Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

| | |
|---|---|
| UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS FILED AUG 16, 2001 | UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS ENTERED AUG 20, 2001 |
| MICHAEL N. MILBY, CLERK LAREDO DIVISION | MICHAEL N. MILBY, CLERK LAREDO DIVISION |
| JOSE MELENDREZ, JR. | CIVIL ACTION NO. L-00-99 |
| Plaintiff, | |
| VS. | |
| ROBERTO LOZA, et al | |
| Defendants. | |

**ORDER**

Pending before this Court is Defendant Ramos' Motion to Dismiss and for Judgment on the pleadings. United States District Judge Keith P. Ellison dismissed the pending case on July 27, 2001. Therefore, the pending motion is DENIED AS MOOT.

DONE at Laredo, Texas, this 16th of August, 2001

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ADRIANA ARCE-FLORES
UNITED STATES MAGISTRATE JUDGE

# Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

| | |
|---|---|
| UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS JULY 27, 2001 | UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS ENTERED JULY 30, 2001 |
| MICHAEL N. MILBY, CLERK | MICHAEL N. MILBY, CLERK LAREDO DIVISION |
| JOSE MELENDREZ, JR., | |
| Plaintiff, | CIVIL ACTION NO: L-00-99 |
| VI. | |
| ROBERTO LOZA, et al, | |
| Defendants. | |

**MEMORANDUM AND ORDER**

Pending before the Court are Defendants' Motions to Dismiss Pursuant to Rule 12(b)(6) and Plaintiff's Motion for Preliminary Injunction. Because the Plaintiff failes to state a claim upon which relief may be granted, and because all the defendants are entitled to qualified immunity, the Court GRANTS the Motions to Dismiss and DENIES the Motion for Preliminary Injunction.

**I. FACTUAL BACKGROUND**

Plaintiff Jose Melendrez, Jr., is a federal prisoner confined in the Federal Prison Camp at Duluth, Minnesota. In his complaint, Melendrez alleges two claims under 42 U.S.C.A &

1983: (1) that the defendants collectively violated the Fourteenth Amendment of the United States Constitution when they forced him to become a confidential informant; and (2) that the defendants violated Due Process when they filed a "Capias/Warrant" against him. Melendrez Requests $20 million dollars in compensatory and punitive damages. He is suing each of the defendants - Zapata County Investigator Tony Quintanilla, Texas State Trooper Arnoldo Ramos, Zapata County District Clerk Arnoldo Flores, Zapata County Sheriff's Department Sergeant Juan H. Navarro, and Zapata County District Attorney Rolando Garza - in their official capacities.

Melendrez first alleges that, from 1993 to 1996, Defendants Loza, Quintanilla, Ramos, and Flores conspired together to force Melendrez to become a confidential informant for Zapata County. While Melendrez participated in a number of case for Zapata County and the State of Texas, he also worked with the Drug Enforcement Administration ("DEA") on a number of federal cases. This cooperation lasted until approximately 1995. Melendrez was ultimately indicted in several state and federal courts, and is currently serving a eighty-four month sentence for conspiracy to possess with intent to distribute marihuana.

Melendrez asserts that the Zapata County Officials threatened him with incarceration if he did not participate in controlled deliveries for them. He does not challenge his current

federal conviction, nor does he challenge the circumstances surrounding that conviction. He complains only that his Fourteenth Amendment rights were violated when the officials threatened and coerced him to act as an informant on several occasions. There is no evidence to suggest that Melendrez was ever convicted in any court as a result of his cooperation with Zapata County Officials.

Secondly, Melendrez contends that the defendants violated his right to Due Process under the United States Constitution by "deliberately filing a capias/warrant on April 21, 2000," and by "fail[ing] to dispose of the case [in Zapata County] in March or April of 1994." Complaint at 2. On March 24, 1994, Zapata County District Clerk Arnoldo Flores filed a summons for Melendrez pursuant to an indictment. According to Melendrez, On April 21, 2000, the Zapata County Sheriff's Department issued a warrant for Melendrez's arrest, which warrant was served by Defendant Navarro. Following issuance of the warrant, a state detainer was lodged against Melendrez, and, as a result, Melendrez was denied the opportunity to participate in the Bureau of Federal Prisons' Residential Drug Abuse Program, for which he had previously been approved.

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1 There is no evidence in the record as to the veracity of Melendrez's factual allegations. However, this Court must accept all of his allegations as true for purposes of a Motion to Dismiss. Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir.1998).

2 Because pro se complaints are to be read liberally, the Court will construe this claim as an invocation of Melendrez's Sixth Amendment Right to speedy trial. See Patterson v. Macdougall, 506 F.2d 1 (5Th Cir. 1975).

In his Complaint and in numerous Responses to the Defendants' Answers and Motions, Melendrez includes copius recitations of the facts surounding his dissatisfaction with the DEA (which is not a party to this lawsuit) and with various other agencies. Melendrez fails, however, to articulate the basis for his specific causes of action. His statement of facts in support of his complaint is confusing, vague, conclusory, and only tangentially related to ths instant causes of action.

## II. DISCUSSION

When a prisoner seeks redress from government entities, officers, or employees in a civil action, a court mist determine if any part of the complaint is frivolous, malicious, fails to state a claim upon which relief could be granted, or seeks monetary relief from a defendant who is immune from seuch relief. See 28 U.S.C.A. & 1915 (b)(1)-(2)(west 2001). This Court should dismiss Melendrez's civil rights complaint "only if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998) (citations and internal quotation marks omitted).

In order to establish a claim under 42 U.S.C. & 1983, the plaintiff must satisfy a two-pronged test: (1) that he was deprived of a right secured by the United States Constitution, and (2) that the deprivation was cause by a state actor. Fontana v. Barham, 707 F. 2d 221, 225 (5th Cir. 1983). If the plaintiff's allegations fail to

"state a claim of violation of clearly established law," the defendants are entitled to official immunity, and the case must be dismissed before discovery commences. Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815 (1985).

**A. Capacity in which Defendants are sued.**

As the Supreme Court has remarked, the distinction between personal-capacity and official capacity lawsuits "continues to confuse and confound lower courts." Kentucky v. Graham, 473 U.S. 159, 165, 105 S.Ct. 3099, 3105 (1985). To establish personal liability of a governmental official for purposes of & 1983, a plaintiff must show "that the official, acting under color of law, caused the deprivation of a federal right." *Id.* Further, a government entity is liable "only when the entity itself is a 'moving force' behind the deprivation." *Id.* (Quoting Polk County v. dodson, 454 U.S. 312, 326, 102 S.Ct. 445, 454 (1981)(citation and internal quotation marks omitted). Accordingly, to prevail in an official-capacity lawsuit, the plaintiff must show that the government entity's "policy" or "custom" played a part in the deprivation of the plaintiff's federal right. *Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 690091, 98 S.Ct. 2018, 2036 (1978).*

The distinction between the two types of lawsuits also affects the defenses that government officials may assert. Defendants in personal-capacity lawsuits may assert official immunity. See Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct.

984(1976) (absolute immunity); Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct.2727(1982)(qualified immunity). Defendants in official-capacity lawsuits, however, are limited to sovereign immunity defenses, such as the Eleventh Amendment. Graham, 473 U.S. at 167, 105 S.Ct. At 3106.

Finally, the above distinction bears on the issue of damages. Punitive damages are available only against defendants sued in their personal capacity. See Graham, 473 U.S. at 167 n. 13, 105 S.Ct. a Ct. at 3106 n. 13(citing Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S.Ct 2748 (1981) and Smith v. Wade, 461 U.S. 30, 103 S.Ct. 1625 (1983)).

Although, Melendrez has styled the instant action as against each defendant "in his official capacity," it is likwly that hw also intends to sue these defendants in thier personal capacities. First, he fails to allege that a municipal "policy or custom" played a part in his deprivation of rights. Second, he requests 15 million in punitive damages. Therefore, the Court construes the Complaint as alleging claims against all defendants in both their personal and official capacities.

**B. Fourteenth Amendment Challenge**

Melendrez asserts that the defendants conspired together, in violation of his Fourteenth Amendment Rights, to force him to act as a confidential informant until 1996. Defendant Ramos asserts that the applicable statute of limitations has expired, and requests that this portion of the case be dismissed. The other

defendants did not join Ramos' statute of limitations argument. However, under 28 U.S.C.A. & 1915A, the Court may raise a limitations defense sua sponte, even when the plaintiff has not had an opportunity to respond. Cf. Scott v. Johnson, 227 F.3d 260, 262 (5th Cir. 2000); Kiser v. Johnson, 163 F.3d 326, 329(5th Cir. 1999).

In the instant case, Melendrez received notice of Ramos' affirmative defense, and responded to the statute of limitations issue in hi "opposition to Defendant Ramos 'Original Answer"(docket no. 22 at 4). Regardless of Melendrez's opportunity (or lack of) to argue the merits of the affirmative defense, this Court can dismiss this claim as to all defendants if it is barred by the statute of limitations. See Scott, 227 F.3d at 262.

Because the Civil Rights Act has no federally enacted statute of limitations, a court must "borrow" the forum states's limitations provision, with respect to the lenght of the limitations period. and to related tolling and applicability issues. See Wilson v. Garcia, 471 U.S. 261, 266-67, 105 S.Ct. 1938, 1942 (1985). An action brought under 42 U.S.C. & 1983 is analogous to a Texas tort action. Helton v. Clements, 832 F.2d 332, 334 (5th Cir. 1987). The Court therefore applies the two-year limitations period, which would accrue when a plaintiff knew or should have known that he was injured. TEX.CIV. PRAC.& REM. CODE & 16.003;Helton, 832 F.2d at 334.

Melendrez admits that in 1993, he knew of the defendants'actions and the implact those action had on him. See

Complaint at 3. Even if he did not know of the defendants actions and the injury to himself until the end of the alleged conspiracy in 1996, Melendrez's claim would still be tieme-barred. The Court therefore dismisses Melendrez's Fourteenth Amendment claim.

## C. Sixth Amendment Challenge

Melendrez contends that the six-year delay between his indictment and arrest constitutes a violation of his Due Process Rights. As indicated above, the Court construes this claim as a challenge under the Sixth Amendment right to a speedy trial. Before reaching the merits of this claim, the Court addresses the defendants' arguments that (1) the Court lacks jurisdiction under the Prison Litigation Reform Act, and that (2) the instant action is barred by Heck V. Humphrey.

### I. Jurisdictional Issues

The defendants argue that Melendrez failed to exhaust his administrative remedies under the Prison Litigation Reform Act, 42 U.S.C.A. & 1997e(West 2001)("PLRA"). But the PLRA, by

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Although, principles of equitable tolling apply to the statute of limitations in & 1983 actions, see Rotella v. Pederson, 144 F.3d 892, 897 (5th Cir. 1998), Melendrez's circumstances do not justify their use. There is no indication that he attempted to pursue a judicial remedy during the period of 1996 to 2000, nor is there any allegation that the defendants "induced or tricked" Melendrez "into allowing the filing deadline to pass." Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96, 111 S.Ct. 453, 458 (1990).

Its own terms, applies to "actions[s] ... brought with respect to prison conditions under section 1983...." Id. & 1997 e(a) (emphasis added). Nothing in Melendrez's Complaint discusses prison conditions. Accordingly, the PLRA's exhaustion requirement is inapplicable to the instant action.

The defendants also argue that Melendrez's allegations are barred by the rule established in Heck v. Humphrey, 512 U.S. 477, 114 Ct. 2364 (1994). In Heck, the Supreme Court held that, if a successful claim under & 1983 would necessarily invalidate a sentence or conviction, the claim must be pursued through habeaus corpus. Id. 486-87, 114 S. Ct. at 2372-73. But the Court's opinion illustrates that this rule does not apply to proceedings in which there has been no conviction. See id. At 487 n.8, 114 S.Ct. At 2373 n.8 ("[I]if a state criminal defendant brings a federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstention may be an appropriate response to the parallel state-court proceedings.") (emphasis added)(citing Colorado River Conservation Dist. V. United States, 424 U.S. 800, 92 S.Ct. 1236 (1976)).

The relevant inquiry for the Court is whether Melendrez has been convicted of the conduct alleged in the 1994 indictment from Zapata County. He has not. Nor has Melendrez stood trial on these charges. Further, the Motion for Preliminary Injunction alleges that the warrant for Melendrez;s arrest, issued during April 2000, was revoked in July 2000. The Court holds that because there has been no conviction, Heck v. Humphrey does not apply to the instant action.

Finally, the Court notes that, even if a detainer is still lodged against Melendrez as a result of the 2000 warrant, Melendrez has not sued the Bureau of Federal of Prisons for early release or

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Because the parties have not briefed the issue of Colorado River abstention, the Court declines to consider it.

Melendrez alleges that the detainer caused the Bureau of Federal Prisons to revoke his admission to the drug rehabilitation program, which resulted in the loss of a twelve-month reduction of his sentence.

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Readmission to the drug abuse treatment program. Rather, he alleges the loss of the twelve-month sentence reduction onlya s damages. All well and good: by failing to join the Bureau in the instant action, Melendrez avoids the strictures of the PLRA. But even if Melendrez prevails on his & 1083 claim against the defendants here, he would not automatically be entitled to early or immediate release. Consequently, although Melendrez may pursue the Sixth Amendment claim through & 1983, rather than through habeas corpus, his claim is nt meritorious, and even if it were, any remedy would be of doubtful viability.

**2. Melendrez's Prima Facie Case**

In order to establish a claim under & 1983, a plaintiff must show that a federally protected constitutional right was violated by persons acting under color of state law. Fontana, 707 F.2d at 225. Section 1983 does not provide redress for every tort inflicted by a government official. See Paul v. Davis, 424 U.S. 693, 700, 96 S.Ct. 1155, 1160(1976). Section 1983 actions are not available

against officials who execute valid warrants. In Baker v. McCollan, 443 U.S. 137, 99 S.Ct.2689(1979), the Supreme Court considered whether an individual properly named on an arrest warrant, but nonetheless a victim of mistaken identity, could state a claim under & 1983 against the sheriff who executed the warrant. The Court rejected the assertion that the Constitution requires an officer "to investigate independently every claim of innocence, whether based on mistaken identity or a defense such as lack of requisite intent." Id. At 146, 99 S.Ct. At 2695. The Plaintiff's innocence, "while relevant to a tort claim of false imprisonment... is largely irrelevant to his claim of deprivation of liberty without due process of law."Id.

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A detainer based on an untried indictment, lodged according to the Interstate Agreement of Detainers, 18 U.S.C. App. 2 (1994), makes a federal prisoner ineligible for early release, even after he has completed a residential drug abuse treatment program. See 28 C.F.R. & 550.58(a)(1)(ii)(2000).

The plaintiff's brother, when arrested fro narcotics violations, used the plaintiff's identity. Id. 140-41, 99 S.Ct. At 2693.

---

Texas has a constitutional duty to bring a criminal defendant to trial "[u]pon[his] demand". Smith v. Hooey, 393 U.S. 374, 383, 89 S.Ct. 575, 579 (1996). But an accused's right to a speedy trial differs from all other procedural rights. See Barker v. Wingo, 407 U.S. 514, 519-21, 92 S.Ct. 2182, 2185-86(1974)(identifying the societal interest in a speedy trial, the possibility that delays may work to a defendant's advantage, and

the difficulty of determining when the right has been denied). To determined whether a speedy trial violation has occurred, courts must balance four factors (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant. Id. At 530, 92 S.Ct. At 2192. Moreover, the Supreme Court has announced its reluctance to find a violation "on record that strongly indicates.... that the defendant did not want a speedy trial." Id. At 536, 92 S.Ct. At 2195.

Based on the facts alleged, it appears that Melendrez never requested a speedy trial for the charges in Zapata County. The delay may actually have been to his advantage , because it appears that he will never be brought to trial on these charges. Moreover, Melendrez fails to show how he has been prejudiced by any such delay. The Court therefore holds that, consistent with the limited nature of & 1983 claims in general, and of speedy trial claims in particular, Melendrez is entitled to no relief consistent with the facts alleged. Furthermore, to the extent that Melendrez is suing the defendants in their official capacities, he has failed to allege that a government entity's policy or custom played a part in the depr vation of his federally protected right.

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Also guiding the analysis in Barker was the Court's recognition that if a Sixth Amendment Speedy trial violation has occurred, the appropriate remedy for a violation of the right to a speedy trial is "the unsatisfactorily severe remedy of dismissal of the indictment" 407 U.S. at 522 92 S.Ct. At 2188.

**3. Official Immunity Defenses**

Even if Melendrez were to state a cognizable basis for recovery under & 1983, the Court would be required to consider whether the defendants are entitled to qualified immunity in their personal capacity, and sovereign immunity in their official capacity. The Court finds that both types of immunity apply to the instant case.

**(A) Qualified Immunity for Personal Capacity Defendants**

Qualified immunity shields a government official from suit. See Cronn v. Buffington, 150 F.#d 538, 541 (5th Cir. 1998). If a defendant raises the defense of qualified immunity, this Court must determine (1) wether the plaintiff has alleged a constitutional violation under the current law, and (2) whether the defendants' actions were objectively reasonable under clearly established law. Id. For a right to be "clearly established," its contours must be so clear that reasonable officials would realize they are violating a persons's constitutional rights. Id. (Internal quotation marks omitted).

Assuming Arguendo that Melendrez has adequately alleged a constitutional violation based on the 2000 arrest warrant, he fails to showl that the unlawfulness of executing the warrant was apparent " in light of pre-existing law." Cronn, 150 F.3d at 542-43 (quoting Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039 (1987). Because the Sixth Amendment rigth to a speedy trial is a "vague concept", Barker, 407 U.S. at 521, 92 S.Ct. At 2187, a reasonable official would scarcely question the

lawfulness of issuing an arrest warrant pursuant to an old indictment, much less that the arrest may amount to a deprivation of a defendant's constitutionallyprotected rights. Cf. Baker v. McCollan, 443 U.S. at 146, 99 S.Ct. At 2695(rejecting the requirement that an arresting officer "investigate independently every claim of innocence"). Accordingly, the Court finds no violation of a clearly established right, and that all the defendants are entitled to dismissal based on qualified immunity.

**(B) Sovereign Immunity for Official Capacity Defendants**

The defendants have raised the defense of sovereign immunity under the Eleventh Amendment , although none has moved to dismiss on that basis. It is beyond peradventure that "neither a State nor its officials acting in their official capacities are 'Persons' under & 1983." Will v. Michigan Dept. of State Police, 491 U.S. 58, 71, 109 S.Ct. 2394, 2312 (1989). Absent a state's waiver of sovereign immunity, governmental entities that are "arms of the State " may not be sued under & 1983. Id. At 70, 109 S.Ct. At 2312 (quoting Mt. Healthy Bd. Of Educ.v. Doyle, 429 U.S. 274, 280, 97 S.Ct. 568, 572 (1977). Official-capacity suits against employees of a municipality, however, are not barred by the eleventh Amendment. See Monell, 436 U.S. at 690 N.54, 98 S.Ct. At 2035 n.54.

Defendant Arnoldo Ramos was, at all relvant times, an employee of the Texas Department of Public Safety. He is therefore immune from the official-capacity claims on the basis of soverign immunity. The other defendants, who were employed by

Zapata County, are not entitled to sovereign immunity from the official-capacity claims.

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Based on the foregoing, it is unnecessary for the Court to determine whether Defendant Rolando Garza is absolutely immune from Melendrez's claims. The Court does note that the "traditional functions of a prosecutor, " for which he or she is absolutely immune, are " to decide which suits to bring and to conduct them in court." Burge v. Parish of St. Tammany, 187 F.3d 452, 478 (5th Cir. 1999).

### D. Motion for Preliminary Injunction

Melendrez, in his Motion for Preliminary Injunction, requests that the Court order the defendants to dismiss the "warrant/Capias" pending against hi in Zapata County. But according to Melendrez, the warrant has already been dismissed for almost a year. See. Motion for Prelim.Inj. Exh.1. Further, even if the Zapata County indictment were still pending, the Court cannot enjoin this criminal proceeding. See Younger v. Harris, 401 U.S. 37, 41, 91 S.Ct. 746, 749 (1971).
Therefore, the Motion for Preliminary Injunction must be denied.

## III. CONCLUSION

For the reasons outlined above, the Court GRANTS the Defendants' Motion to Dismiss and DENIES the Plaintiff's Motion for Preliminary Injunction.

IT IS SO ORDERED.
SIGNED this 27 day of July, 2001.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**To insure full notice, each party who receives this notice shall forward a copy of it to every other party and affected non-party even though they may have been sent one by the Court.**

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The facts alleged by Melendrez fail to satisfy Younger's exceptions for (1) a "bad faith prosecution with no purpose or expectation of a conviction, id. At 48-49, 91 S.Ct. At 752-53;or (2) a "flagrantly and patently" unconstitutional statute, id., at 53, 91 S.Ct. At 755.

# Appendix C

**UNITED STATES COURT OF APPEALS**

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**CHARLES R. FULBRUGE III**
**CLERK**

**TEL., 504-310-7700**
**600 CAMP STREET**
**NEW ORLEANS, LA 70130**

**June 4 2002**

**MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:**

**Regarding: Fifth Circuit Statement on Petitions for Rehearing En Banc**

**No. 01-41098 Melendrez v. Loza**
**USDC No. L-00-CV-99**

---

Enclosed is a copy of the Court's decision. The Court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. App. P.'s 39 through 41, and 5th Cir. RULES 35, 39, and 41 govern costs, rehearings, and mandates. 5th Cir. Rules 35 and 40 Require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order. Please read carefully the internal Operating Procedures (IOP'S) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will notbe granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be

presented to the Supreme Court. Otherwise, this court may deny the motion and issue mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your, to file with the Supreme Court.

Sincerely,

CHARLES R. FULBRUGE III, CLERK

By: _____
Kristin G. Cowdell, Deputy Clerk

Enclosure
Mr. Jose Melendrez Jr.
Mr. Phillip A. McKinney

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

U.S. Court of Appeals

No. 01-41098 FILED

Summary Calender JUNE 04, 2002

Charles R. Fulbruge, III., CLERK

JOSE MELENDREZ, JR.,

Plaintiff - Appellant

Versus

ROBERTO LOZA, Task Force Agent, Zapata County, Texas in his official capacity; TONY QUINTANILLA, formerly Investigator of Zapata County, Texas, now a U.S. Border Patrol Agent in his official capacity; John doe, State Trooper (DPS), Del Rio, Texas in his official Capacity; Arnoldo Flores, District County Clerk, Zapata County, Texas in his official capacity; JUAN H. NAVARRO, Sergeant at Zapata County Sheriff's Department, Texas in his official capacity; ROLANDO GARZA, District Attorney, Zapata County, Texas in his official capacity,

Defendants-Appellees.

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Appeal from the United States District Court
For the Southern District of Texas
USDC No. L-OO-CV-99

---

Before JOLLY, DEMOSS, and STEWARD, Circuit Judges:
PER CURIAM:

Jose Melendrez, Jr., federal prisoner # 06688-059, appeals the dismissal of his civil rights complaint, filed pursuant to 42 U.S.C. & 1983, for failure to state a claim under FED.R. CIV.P 12 (b)(6).

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Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Melendrez's claims are against officials of Zapata County, Texas, in their official capacities. Therefore, the officials are not subject to & 1983 liability. Will v. Michigan Dept' of State Police, 491 U.S. 58, 71 (1989); Skelton v. Camp, 234 F.3d 292, 294 (5th Cir. 2000). Zapata County is likewise immune because Melendrez fails to point to an official policy or custom that cause the deprivation of a constitutional rights. Monell v. Department of Social Servs. of New York, 436 U.S. 658, 694 (1978); Evans v. City of Houston, 246 F.3d 344, 358 (5th Cir. 2001).

Melendrez also appeals the district Court's denial of his motion for a preliminary injunction. Melendrez's requests to have the district court enjoin a state court from prosecuting him falls under the purview of Younger's abstention doctrine. Younger v. Harris, 401 U.S. 37, 41 (1971)); Louisiana Debating and Literary Ass'n v. City of New Orleans, 42 F.3d 1483, 1489 (5th Cir. 1995).

Therefore, the district court did not err when it dismissed Melendrez's motion for a preliminary injunction. Sugar Busters L.L.C. v. Brennan, 177 F.3d 258, 265 (5th Cir. 1999). The judgment of the district court is affirmed.

Melendrez's motion for the appointment of counsel is denied. The request for cost under FED. R. APP.P. 38 by appellees Loza, Quintanilla, Flores, Navarro, and Garza is denied for failure to file the proper motion. See FED.R.App.P. 38

AFFIRMED; ALL MOTIONS DENIED.

# Appendix D

TO: CENTRAL RECORDS BUREAU, LAREDO

POLICE. DEPT. ( )

SHERIFF'S OFFICE IDENTIFICATIOIN DIV.( )

Date: 07/25/00

DEFENDANT (S) JOSE MELENDREZ JR.

D.O.O: 04/05/93 D.O.B. 03/18/71 Arresting Officer:

CHARGE (S) Agg. Poss of Cocaine C+1, Poss of Marihuana F/3

HELD ( )

HEARING: WAIVED ( ) BOUND OVER TO 19

TERM BOND: $ _____

J/P HECTOR J. LIENDO ( )

J/P DANNY VALDEZ ( )

J/P OSCAR O. MARTINEZ ( )

J/P SANTOS BENAVIDEZ ( )

CHARGED REDUCED TO _____

FINED: $_____ WITH CREDIT FOR TIME SERVED ( )

( ) TO SERVE IN _____

SENTENCED TO _____ ( ) PLACED ON PROBATION

FOR _____

REMARKS : DISMISSED FOR SUFFICIENT PUNISHMENT

CAUSE # 992 DISTRICT ATTORNEY'S OFFICE

____COURT 49th & 94 1st JUD. DISTRICT. WEBB COUNTY

D.A.S FILE NO. 992 By Rolando Garza

12-12-00 Per Rolando Garza, Zapata Co. Prosecutor 956-721-2443; Regarding Case # 992, This case is still scheduled for

dismissal Zapata Co. has no intention of placing a detainer or maintaining an active warrant on this case.

K. Wild Olson, LIE

(2)

Supreme Court, U.S.
FILED
SEP 3 2002
CLERK

NO. 02-180

IN THE
# Supreme Court of the United States

---

**JOSE MELENDREZ, JR.,** ***Petitioner***

**V.**

**ROBERTO LOZA,** Task Force Agent, Zapata County, Texas in His Official Capacity; **TONY QUINTANILLA,** Formerly Investigator of Zapata County, Texas, now a U.S. Border Patrol Agent, in His Official Capacity; **ARNOLDO RAMOS,** Sergeant/Investigative Department of Public Safety in Del Rio, Texas, in His Official Capacity; **ARNOLDO FLORES,** District County Clerk, Zapata County, Texas, in His Official Capacity; **JUAN H. NAVARRO,** Sergeant at Zapata County Sheriff's Department, Texas in His Official Capacity; **ROLANDO GARZA,** District Attorney, Zapata County, Texas in His Official Capacity, ***Respondents.***

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## RESPONDENTS, LOZA, QUINTANILLA, FLORES, NAVARRO, AND GARZA'S BRIEF IN OPPOSITION

---

Phillip A. McKinney, State Bar No. 13723200
McKINNEY & RODRIGUEZ-BARRERA, P.C.
Attorney and Counsel of Record for Respondents Loza, Quintanilla, Flores, Navarro, and Garza

20 pp

## QUESTIONS PRESENTED

1. Was it error to construe the Petitioner's 42 U.S.C.A. § 1983 claim as a claim for the violation of his Sixth Amendment right to a speedy trial where a liberal reading of the petition revealed no other possible cognizable theory?

2. Were the defendants entitled to official immunity where they were sued in their official capacities and the pleading made no allegation of a denial of a clear constitutional right or of an unlawful object in the alleged conspiracy?

3. Was it error for the trial court to liberally construe the Petitioner's pleadings in Petitioner's favor as suing the defendants in both their personal and official capacities, when the pleading only asserts a claim against them in their official capacities?

4. Can Petitioner bring a Fourteenth Amendment claim more than two years after the alleged cause of action accrued?

5. Was it error to dismiss the Sixth Amendment Challenge where the Petitioner failed to assert sufficient law or facts to support such a claim and where the Petitioner specifically disavows the claim?

BEST AVAILABLE COPY

6. Whether Respondent Ramos is entitled to immunity as a state employee? Not a subject in this brief.

7. Was it error to dismiss as moot the Petitioner's Motion for Preliminary injunction where the warrant/capias had already been dismissed and where the relief requested is beyond the court's appropriate exercise of jurisdiction?

## CORPORATE DISCLOSURE STATEMENT

Respondents, Roberto Loza, Rolando Garza, Arnoldo Flores, Juan H. Navarro, and Tony Quintanilla do not dispute the list of parties provided by the Petitioner, but offer this Corporate Disclosure Statement for their insurer, St. Paul Fire & Marine Insurance Co. ("SPFM"). SPFM is a wholly owned subsidiary of The St. Paul Companies.

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I

# RESPONDENT'S BRIEF IN OPPOSITION

Respondents, Roberto Leon, Tony Quintanilla, Arnoldo Flores, Juan H. Navarro, and Rolando Garza, file this Brief in Opposition praying that this Court deny the Petition for Writ of Certiorari complaining of the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case June 6, 2002.

## REASONS FOR DENYING THE WRIT

Petitioner's case was dismissed for procedural reasons and because, on its face, it failed to state a proper claim or was barred by limitations. Petitioner has failed to demonstrate to this Court that the judgment was legally or factually wrong on the issues decided. Thus the Petition for Writ of Certiorari is misdirected and fails to sustain any appellate burden of proof.

### A. The Courts Below Properly Construed Petitioner's Allegations.

Petitioner, in less than precise language, and Respondents in their official capacities under 42 U.S.C.

§ 1983 for (1) conspiracy to force him to act as a confidential informant in violation of his 14th Amendment rights; and (2) conspiracy to deprive him of due process rights in processing a warrant for a stale criminal charge. The complaint seeks $20 million in compensatory and punitive damages.

The trial court noted that exemplary damages would only be available against the defendants in a § 1983 action if they were sued in their personal capacity. Memorandum and Order of July 30, 2001, pp. 4-5 (citing *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S.Ct. 3099, 3105 (1985)). The trial court also noted that the pleading was deficient in alleging that the government's policy or custom played a part in the alleged deprivation of rights. Memorandum, p. 4 (citing *Kentucky v. Graham, supra* and *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690-91, 98 S.Ct. 2018, 2036 (1978)).

Therefore, in keeping with the requirement to construe pro se complaints liberally, the trial court *expanded* the Petitioner's claims to include a claim for liability in the defendants' personal capacities. Memorandum, p. 2-5 (citing *Patterson v. MacDougall*, 506 F.2d 1 (5th Cir. 1975)). Because this action was *favorable* to the Petitioner, it does not support his request for reversal. Petitioner's Issue III is without merit.

Petitioner asserts that *Monell* does not apply and urges instead *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727 (1982). *Harlow* does not apply to this case because it involved a presidential aide who was entitled to qualified immunity also asserting absolute immunity derivative of the president's status. Respondents have asserted immunity, and are entitled to that immunity, as it applies to their own actual status under the law.

Oddly, Petitioner advances *Klopfer v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988 (1967). That case, while speaking in Petitioner's terms of denial of liberty, specifically evaluates that claimed right in terms of the Sixth Amendment right to a speedy trial. *See generally*, U.S. CONST. Amend. VI. As discussed herein, Petitioner specifically disavows any claim under the Sixth Amendment and has not stated a cognizable speedy trial claim.

Petitioner also cites *Slavin v. Curry*, 574 F.2d 1256 (5th Cir. 1978), *modified*, 583 F.2d 779 (5th Cir. 1978). While that case permits allegations against individuals for conspiracy to deprive one of his civil rights, the case is inapplicable where there has been no cognizable deprivation of civil rights and where the Petitioner specifically disavows any claim against the Respondents in their personal capacities.

Again, the trial court construed the complaint liberally in favor of Petitioner when reading it to assert a Sixth Amendment speedy trial right. The gist of Petitioner's complaint was that a warrant for his arrest was "stale" when issued and executed six years after the alleged criminal conduct. However, before the trial court determined this case, the warrant was dismissed. In the meantime, Petitioner complains that the timing of the warrant disturbed favorable treatment that the Petitioner had arranged in his punishment for other offenses.

While the Complaint asserts vague "due process" violations, the factual assertions, to the extent that they complain of the Respondents' conduct, are directed at the six-year delay between the conduct and the arrest. Thus, the only possible claim articulated in the Complaint was one for a speedy trial. The trial court construed this claim liberally in Petitioner's favor. Memorandum, p. 6. *See generally, Patterson, supra.*

Petitioner now disavows any intention to assert a Sixth Amendment claim, suggesting instead that he was making a complaint for a conspiracy to deprive him of "freedom of choice, liberty and due process rights . . . ." Petition, p. 21. Yet even at this stage of the case, he has failed to articulate what facts or law apply to such vague, general, and conclusory allegations. Thus this argument

does not support his request for reversal. Petitioner's Issues I and V are without merit.

### B. The Sixth Amendment Claim Was Properly Dismissed.

Petitioner continues to disavow any right to recover under the Sixth Amendment. Petition, pp. 26-27. Thus his presentation of Issues I and V do not present any basis for reversal and are without merit. In an abundance of caution, however, Respondents set out the analysis by which the lower courts rendered a correct decision.

Petitioner's Sixth Amendment claim is his allegation that the Respondents violated his rights by issuing and serving a warrant against him six years after the conduct that triggered the warrant. The record shows that the warrant has been revoked. Memorandum, p. 7. His alleged injury is the adverse impact that warrant had on the punishment he was receiving on other criminal convictions.

Dismissal is appropriate under Fed. R. Civ. P. 12(b)(6) where it appears that no relief could be granted under any set of facts consistent with the allegations. *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998). A claim under 42 U.S.C. § 1983 requires a showing of (1) deprivation of a U.S. Constitutional right (2) caused by a

state actor. *Fontana v. Barham*, 707 F.2d 221, 225 (5th Cir. 1983).

The "facts" set out in the Petition appear to be identical in all material respects to those alleged in the Complaint. Of course, it is only the allegations in the complaint that are considered in a motion to dismiss. *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998). These "facts," if proven, would not support a judgment against these Respondents. There is no allegation of the violation of a clear right or actionable conduct that would not be barred by limitations.

This Court has determined that an action under § 1983 is not available against officials who execute valid warrants. *Baker v. McCollan*, 443 U.S. 137, 99 S.Ct. 2689 (1979). The Petitioner's only claim that the warrant was invalid was his general complaint about its delay. He cites no authority for any argument that the warrant was objectively invalid because it was "stale."

Accordingly, the only way to determine if there was a problem with the warrant would be to balance four factors: (1) the length of the delay, (2) the reason for the delay, (3) the Petitioner's assertion of the right, and (4) the prejudice to the Petitioner. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192 (1974). Petitioner has not alleged facts

that support his claim under this test, and the Respondents cannot be charged with having to make this analysis. *See generally, Baker, supra.* Indeed, the trial court observed that Petitioner had not made a claim for a speedy trial of the charges contained in the warrant and probably benefitted from the delay. Memorandum, p. 9.

Petitioner's Issues I and V are without merit.

**C. The Fourteenth Amendment Claim Was Properly Dismissed.**

Petitioner's Fourteenth Amendment claim is his allegation that the Respondents conspired to force him to act as a confidential informant. *See generally*, U.S. CONST. Amend. XIV. According to the face of the Complaint, the alleged conspiracy ended in June, 1996. This action was filed on July 25, 2000, over four years later.

Petitioner does not complain of the invalidity of any of his current convictions. Neither does he assert that those convictions are related to his actions as an informant. Thus there is no cognizable claim of injury asserted in his Fourteenth Amendment complaint. Memorandum, p. 2.

Additionally, the statute of limitations is a proper basis for dismissal of an untimely claim. *Scott v. Johnson*,

227 F.3d 260, 262 (5th Cir. 2000). The Texas tort statute of limitations applies to this 42 U.S.C. § 1983 claim. *See generally*, *Wilson v. Garcia*, 471 U.S. 261, 266-67, 105 S.Ct. 1938, 1942 (1985); *Helton v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987). Thus the claim is barred if filed more than two years after the cause of action accrued. Tex. Civ. Prac. & Rem. Code § 16.003. According to the face of the complaint, it was filed more than four years after the cause of action accrued. Therefore, it is barred by the statute of limitations.

Petitioner now argues that limitations does not bar this suit because of the doctrine of equitable tolling, citing *Rotella v. Pederson*, 144 F.3d 892, 897 (5th Cir. 1998). However, Petitioner did not plead equitable tolling. And his extensive fact rendition does not include any suggestion that the Respondents induced or tricked him into allowing the filing deadline to pass. Pursuit of an administrative remedy, without more, does not satisfy these requirements.

Petitioner's Issue IV is without merit.

**D. Respondents Were Entitled to Immunity.**

If the plaintiff's allegations fail to state a claim of violation of clearly established law, the defendants are entitled to official immunity. *Mitchell v. Forsyth*, 472 U.S.

511, 105 S.Ct. 2806, 2815 (1985). To make a claim against the defendants in their official capacities, the plaintiff must show that a governmental policy or custom played a part in the deprivation of rights. *Monell, supra.* As Petitioner failed to make this allegation, he has failed to assert a *prima facie* case against the Respondents in their official capacity. *See generally, Cronn v. Buffington*, 150 F.3d 538, 541 (5th Cir. 1998).

Furthermore, qualified immunity protects the Respondents from suit if their actions were objectively reasonable under clearly established law. *Cronn, supra.* Thus for Petitioner to prevail, he would have to show that the Respondents knew that they were violating Petitioner's clearly established right. As noted above, there was no such clearly established right with respect to the timing of the warrant. Therefore, qualified immunity protects the Respondents from this suit.

Petitioner's Issue II is without merit.

**E. The Injunction Request Was Moot.**

Melendrez sought an injunction ordering the Respondents to dismiss the warrant. Yet the motion requesting that relief indicated on its face that the warrant

had already been dismissed for almost a year. Memorandum, p. 12. Thus, the request was moot.

Petitioner does not dispute that the warrant was already dismissed in 2002. Instead, he asserts that the warrant was still active in 2000. Even if true, that fact does not change the analysis that, when the matter was presented to the trial court, it was already moot.

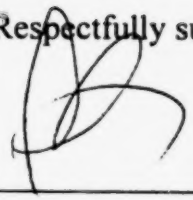
Furthermore, the request for injunctive relief is beyond the court's appropriate exercise of jurisdiction. *See Younger v. Harris*, 401 U.S. 37, 41, 91 S.Ct. 746, 749 (1971). Petitioner did not address this basis for the courts' decision. Thus, any complaint about this reasoning for the lower courts' decisions is waived.

Thus Petitioner's Issue VII is without merit.

## PRAYER

For the reasons stated, certiorari should be denied and Respondents, Roberto Loza, Rolando Garza, Arnoldo Flores, Juan H. Navarro, and Tony Quintanilla so request.

Respectfully submitted,



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**ATTORNEYS AND COUNSEL OF RECORD FOR RESPONDENTS ROBERTO LOZA, ROLANDO GARZA, ARNOLDO FLORES, JUAN H. NAVARRO, AND TONY QUINTANILLA**

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Respondent's, Loza, Garza, Flores, Navarro, and Quintanilla's, Brief in Opposition was served on all counsel of record by placing three copies of same in the United States Mail, first class, postage prepaid, on the date indicated below, addressed as follows:

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Dated: AUGUST 26TH, 2002.

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